comments present no evidence that even remotely suggests that either of these two conditions is present here.

Switching Rates. The only rates at issue here are the unbundled switching rates. AT&T and WorldCom claim that, because the switching rates in Vermont are higher than the rates recently adopted by the New York PSC, the Vermont rates cannot be TELRIC-compliant. See AT&T at 9-10; Lieberman Decl. ¶¶ 5-27; WorldCom at 3. These claims are without merit.

First, as noted above, the Vermont PSB has established TELRIC rates in an exhaustive proceeding of its own based on the facts in Vermont. The Commission has held that it will "place great weight" on a state commission's "active review and modification of [Verizon's] proposed unbundled network element prices, its commitment to TELRIC-based rates, and its detailed supporting comments concerning its extensive, multi-phased network elements rate case." New York Order ¶ 238. Given that the Vermont PSB's own review clearly meets all of these criteria, there is no basis on which to disturb its findings.

Second, as both the Commission and the courts have recognized, TELRIC is not designed to produce the same result in every case.[22] Likewise, the Commission has held that there is no requirement that the rates in an applicant state compare favorably with the lowest rates adopted in any other state.[23] Consequently, the issue is not whether another

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[22] See, e.g., AT&T, 220 F.3d at 615 ("application of TELRIC principles may result in different rates in different states"); Michigan Order ¶ 291 ("use of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC vary from state to state").

[23] See, e.g., Joint Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order ¶ 56, CC Docket

state commission or this Commission might set different rates than those set by the Vermont PSB. The issue is instead whether the PSB adhered to TELRIC principles, and the PSB has affirmed that it did.

Third, and finally, the Commission will conduct a benchmark comparison of the rates in an applicant state with those in a previously approved state only where the applicant state did not conduct a TELRIC analysis for one or more rates — for example, where it adopted a rate from another state, or where the state did not appear to follow TELRIC principles in one or more respects. In these instances, the Commission performs a benchmark analysis to determine whether the rates, although they may not have been set in accordance with TELRIC principles, "nonetheless fall within the range that a reasonable TELRIC-based ratemaking would produce." Arkansas/Missouri Order ¶ 56; see also Pennsylvania Order ¶ 61. Here, the Vermont PSB has affirmed unequivocally that it followed TELRIC principles in establishing wholesale rates, which means that a benchmark comparison to the rates in New York or elsewhere is inappropriate.

AT&T and WorldCom also specifically challenge a few of the inputs that the Vermont PSB used in establishing the switching rates. As demonstrated below, each of these claims is misplaced.

No. 01-194, FCC 01-338 (rel. Nov. 16, 2001) ("Arkansas/Missouri Order") (no requirement to "pass the benchmark test for each and every state that it might be compared with to show that its rates are within the reasonable range of what TELRIC would produce"); see also id. ("We disagree with AT&T's assertion that Kansas should be used for a rate comparison with Missouri's recurring charges rather than Texas."); id. ¶ 67 (relying on comparison between Arkansas and Kansas, but not Arkansas and Texas); Massachusetts Order ¶ 28 (rejecting AT&T's request that the Commission compare Verizon's rates to those "found to be TELRIC-based in the SWBT states of Texas, Kansas, or Oklahoma").

First, there is no merit to AT&T's claim that the average per-line switch investment adopted by the Vermont PSB is somehow too high. See AT&T at 10-11.[24] AT&T's only basis for this allegation is that the per-line investment adopted by the PSB is higher than the per-line investment used in the recent order of the New York PSC. See McCarren/Garzillo/Anglin Reply Decl. ¶¶ 6-7. But it makes no sense to compare switching investment in Vermont — the most rural state in the country — with that in New York, which contains one of the largest and most dense urban areas in the country. See id. ¶ 8. Moreover, the switching investment adopted by the PSB is substantially lower than what Verizon initially proposed in its cost study. See id. In any event, as both the Commission and the courts have recognized, TELRIC is not designed to produce the same result in every case.[25] Rather, the "use of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC may vary from state to state."[26] Consequently, the issue is not whether another state commission or this Commission might take a different approach from the one taken by the Vermont PSB.

[24] AT&T also complains (at 11-12) that the switching discount in Vermont is too low. As AT&T acknowledges, however, the Vermont PSB based the switching discount solely on the discounts available on new switches — as AT&T has urged — even though the Commission and the D.C. Circuit have held that a mix of new and growth switches is appropriate under TELRIC. See, e.g., New York Order ¶¶ 243-246; Massachusetts Order ¶ 33; Kansas/Oklahoma Order ¶ 77; AT&T, 220 F.3d at 617-18.

[25] See, e.g., AT&T, 220 F.3d at 615 ("application of TELRIC principles may result in different rates in different states"); Michigan Order ¶ 291 ("use of TELRIC principles will necessarily result in varying prices from state to state because the parameters of TELRIC may vary from state to state").

[26] Michigan Order ¶ 291.

The issue is instead whether the PSB adhered to TELRIC principles, and the PSB has affirmed that it did.[27]

Second, there is no basis to AT&T's claim that the engineering, furnishing and installation (EF&I) factor in Vermont is too high. See AT&T at 14-15. Historically, Verizon has used state-specific EF&I factors in its cost studies. See McCarren/Garzillo/Anglin Decl. ¶ 21. During the course of the state proceedings in Vermont, Verizon provided detail support justifying the EF&I factor adopted by the PSB. See id. The Vermont cost study assumes that Verizon performs all of its installation work itself, because Verizon *does* perform all of that work itself in Vermont. See id. And there is no reason to assume that the installation factor in Vermont would be lower if a vendor installed the switch instead of Verizon. See id. In fact, the data show that switch installation in West Virginia — where vendors install the switches and which has similar demographics to Vermont — costs more on a per-line basis than in Vermont. See id. Moreover, the installation costs account for less than one-quarter of the EF&I factor, so any conceivable cost savings that might be achieved by contracting out to a vendor would have only a small impact on the EF&I factor, and an even smaller impact on the switching rate as a whole. See id. ¶ 22. Not surprisingly, therefore, the Vermont PSB specifically rejected the very same claim that AT&T raises here, finding that there was no

[27] AT&T nonetheless complains (at 12-13) that, after the PSB ordered Verizon to reduce its switch investment costs, Verizon did not reflect that reduction in all of its unbundled switching rates. That is simply incorrect. With respect to each of the specific rates about which AT&T complains, Verizon reduced them by a greater amount than AT&T claims, and did so consistent with the requirements of the Vermont PSB. See McCarren/Garzillo/Anglin Reply Decl. ¶¶ 10-11.

"plausible evidence to suggest that the [data on which Verizon's EF&I factor was based] are not representative of expected future costs." February 4 Order at 28.[28]

In any event, the premise of AT&T's argument — that EF&I factors, like material costs of the switch, will decline over time — is fundamentally flawed. In fact, the opposite is true. EF&I costs — which involve items such as engineering, transportation, warehousing, installation, and testing — are likely to increase over time, even as switch prices decline. See McCarren/Garzillo/Anglin Reply Decl. ¶¶ 23-24. EF&I factors are calculated as the relationship of total switching investment to materials investment. See id. Thus, if the material investment in a switch declines, the EF&I factor will increase. See id.

Third, the Vermont PSB correctly permitted Verizon to charge for both originating and terminating minutes on an intra-switch call. See WorldCom at 6-7. While WorldCom claims that the position taken by the PSB differs from the approaches taken by the commissions in Massachusetts and New York, it neglects to mention that the PSB's position on this issue is the same as the one taken by the Pennsylvania PUC and the Rhode Island PUC, and upheld by this Commission.[29] This is particularly ironic, given that WorldCom has elsewhere conceded that the Pennsylvania rates have "le[d] to

[28] The Vermont PSB also has rejected AT&T's unsupported claim that the power factor used in Vermont is somehow too high. See February 4 Order at 28 (finding "no plausible evidence to suggest that" the data on which the power factor was based "are not representative of expected future costs"); McCarren/Garzillo/Anglin Reply Decl. ¶ 26.

[29] See Pennsylvania PUC Consultative Report at 179, CC Docket No. 01-138 (FCC filed June 25, 2001) ("we find that [WorldCom's] claim of Verizon PA double-billing for an intraswitch local call does not warrant a conclusion that Verizon PA has failed to comply with this checklist item"); Pennsylvania Order ¶¶ 60-61 (finding that switching rates in Pennsylvania are TELRIC-compliant).

competitive entry . . . statewide in Pennsylvania."[30] And the simple fact is that it is entirely appropriate for Verizon to charge for the separate costs of originating and terminating a call because Verizon has to perform both functions on an intra-switch call, and therefore incurs both costs for such calls, just as it does for an inter-switch call. See McCarren/Garzillo/Anglin Reply Decl. ¶¶ 35-39.

Fourth, the switching rates in Vermont do not improperly use only the minutes for workdays to determine the per-minute usage rates, but also account for switching usage during weekends and holidays. See WorldCom at 6; AT&T at 15-16. The Vermont rates are based on the costs of engineering a switch to accommodate peak levels of demand. See McCarren/Garzillo/Anglin Reply Decl. ¶ 31. Verizon first estimates the size of the switch it will need to accommodate demand during a busy hour, and then divides that figure by an estimate of the total number of minutes per year that the switch will be used. See id. ¶¶ 31-33. In calculating the number of minutes that the switch will be used in a year, Verizon uses a methodology that properly takes into account usage on every day of the year, and not just peak usage. See id. This methodology is accordingly TELRIC-compliant. See id. ¶ 34.

Fifth, AT&T claims for the first time that the charges for Daily Usage Files ("DUF") in Vermont are too high. See AT&T at 16. During the course of the state proceedings in Vermont, Verizon provided detail support justifying the DUF charges adopted by the PSB. See McCarren/Garzillo/Anglin Reply Decl. ¶ 28. AT&T makes no

[30] Testimony of Robert Lopardo, WorldCom, Technical Session Before the Massachusetts DTE, Docket DTE 99-271, Tr. at 5606 (Mass. DTE Sept. 8, 2000) ("Lopardo Tr."), App. B, Tab 565, to Application by Verizon New England for Authorization To Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 00-176 (FCC filed Sept. 22, 2000).

attempt now to describe why the assumptions used by the Vermont PSB in establishing this rate fail to comply with TELRIC principles. AT&T claims instead that the rates are based on data from 1995/1996, but that is irrelevant to whether the rates are TELRIC-compliant. As the D.C. Circuit has held, "[i]f new information automatically required rejection of section 271 applications," such applications "could [never] be approved in this context of rapid regulatory and technological change." AT&T, 220 F.3d at 617-18; see also Rhode Island Order ¶ 31; New York Order ¶ 247. And, while AT&T claims that the DUF rates in Vermont are higher than the rates in other states, as noted above, the Commission has recognized that TELRIC is not designed to produce the same result in every case. Moreover, the DUF rate that the Commission just approved in the Rhode Island Order is almost identical to the rate in Vermont. See McCarren/Garzillo/Anglin Reply Decl. ¶ 29.

Finally, even if the Commission were to conclude that the PSB did not follow TELRIC principles in every respect, it may still find that the Vermont rates fall within the range that a reasonable application of TELRIC principles would produce. The current unbundled loop and unbundled switching rates in Vermont satisfy a benchmark comparison to the rates recently adopted in New York when the loop and switching rates in both states are taken as a whole. See McCarren/Garzillo/Anglin Reply Decl. ¶¶ 46, 50-51. The statewide average combined loop and non-loop rate in Vermont is currently *** ***. See id. ¶ 51. Because costs in Vermont are much higher than costs in New York, however, Verizon could charge a combined rate of as much as *** *** in Vermont and still satisfy a benchmark comparison to the rates recently adopted in New York. See id.

While the Commission has typically examined the rates for loops and non-loop elements separately in conducting a benchmark analysis, the presumable rationale for doing so is that CLECs frequently order unbundled loops separately from other elements. See id. ¶ 46. The Commission also has recognized, however, that elements that are purchased together, rather than separately, can be benchmarked together. The Commission has accordingly permitted the rates for all non-loop elements to be considered as a whole for benchmarking purposes. See, e.g., Massachusetts Order ¶ 25 (relying on a comparison of the "weighted average" of the rates for "switching [usage], transport, and switch ports"); Arkansas/Missouri Order ¶ 60 (relying on aggregate comparison of "non-loop rates"). Consistent with this precedent, it is appropriate to analyze the non-loop rates in Vermont by considering them together with the loop rates, because carriers in Vermont (and throughout the former Bell Atlantic region) invariably purchase switching elements together with loops. See McCarren/Garzillo/Anglin Reply Decl. ¶ 47. The Commission may at the same time, of course, continue to analyze the loop rates in Vermont separately, because carriers in Vermont do purchase loops separately. See id. ¶ 49.[31] This approach not only reflects the realities of the competitive marketplace, but it also avoids the bizarre result of applying a standard that the current rates might not satisfy, even though those rates are nearly 50 percent lower than rates that could satisfy this standard.

[31] There is no concern that the switching rate may affect other rates, such as the rate for reciprocal compensation, and should therefore be analyzed separately. See McCarren/Garzillo/Anglin Reply Decl. ¶ 48. As an initial matter, the overwhelming majority of reciprocal compensation payments are paid *to* CLECs. See id. Moreover, the reciprocal compensation payments made to Verizon in Vermont are based on rates that bear no relationship to Verizon's local switching rates, but are instead based on the rates the FCC adopted in its most recent reciprocal compensation order. See id.

Price-Squeeze Claims. The long distance incumbents argue that, even if Verizon's UNE rates in Vermont were found to be TELRIC-compliant, the Commission could still find that they violate the checklist if they result in a so-called "price squeeze." See AT&T at 17-18. There is no merit to this claim.

The Commission has repeatedly held that, in order to satisfy the checklist, "incumbent LECs are not required, pursuant to the requirements of section 271, to guarantee competitors a certain profit margin."[32] And the D.C. Circuit has explicitly rejected the argument that the Commission must perform such an analysis in the context of determining whether rates satisfy the checklist under section 271(d)(3)(A): "[W]e can hardly find the Commission's rejection of appellants' proposal unreasonable. . . . And it would be reasonable for the Commission to treat any questions raised by the low volumes, or by the appellants' evidence showing the difficulty of making a profit . . . as subsumed within the issue of TELRIC compliance."[33]

In an attempt to put a new spin on its rejected argument, AT&T relies on section 252(d)(1), which requires Verizon's wholesale rates to be "nondiscriminatory."[34] AT&T claims (at 18) that this provision is triggered if Verizon's wholesale rates are higher than its retail rates. But the "nondiscrimination" requirement in section 252(d)(1) has nothing to do with the relationship between wholesale and retail rates. As the Commission has

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[32] Arkansas/Missouri Order ¶ 65; see also Kansas/Oklahoma Order ¶ 92; Pennsylvania Order ¶ 70.

[33] Sprint, 274 F.3d at 553-54.

[34] AT&T Ex Parte Letter at 4 (citing 47 U.S.C. §§ 252(d)(1), 271(c)(2)(B)(ii)).

held, that provision is instead designed to ensure that incumbent LECs do not charge wholesale rates that discriminate between various wholesale customers.[35]

AT&T nonetheless argues that the Supreme Court's decision in FPC v. Conway, 426 U.S. 271 (1976), somehow supports its reading of the Act. But that case is distinguishable from the situation here. In Conway, the Court held that the Federal Power Commission "ha[d] jurisdiction to consider the allegations of the company's wholesale customers that the proposed wholesale rates, *which are within the Commission's jurisdiction*, are discriminatory and noncompetitive when considered in relation to the company's retail rates, which are not within the jurisdiction of the Commission."[36] Unlike the Federal Power Commission, this Commission does not have jurisdiction over wholesale rates, which are instead established by state commissions. The permissible statutory inquiry under the Communications Act is therefore very different from the inquiry under the Federal Power Act at issue in Conway. And as the D.C. Circuit has held, for purposes of checklist compliance it is permissible to limit that inquiry to whether the rates established by the state commission comply with TELRIC.[37]

The long distance incumbents also attempt to repackage their substantive challenges to Verizon's rates as a price-squeeze claim. They argue that the difference

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[35] See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, ¶¶ 859-861 (1996) ("Local Competition Order") (subsequent history omitted).

[36] 426 U.S. at 271, 272-273 (emphasis added).

[37] See Sprint, 274 F.3d at 557 ("Thus, a challenger can prevail here by making one of two showings. First, he may demonstrate that the FCC acted arbitrarily and capriciously in finding that the state commission followed basic TELRIC principles. Alternatively, he may point to specific factual errors made by the state commission, and demonstrate either that the FCC failed to consider these errors or that it arbitrarily determined that the rates were nevertheless within the range acceptable under TELRIC.").

between Verizon's existing UNE rates and the retail rates in Vermont is too small for competing carriers to earn a gross profit that is large enough for these carriers to compete for residential customers. See AT&T at 31-40; WorldCom at 7-8. Accordingly, they claim that Verizon's long distance entry would not be in the public interest. These arguments are misguided as both a factual and legal matter.

In Vermont, the gross profit margin available to competitors is substantial. For example, even AT&T and WorldCom acknowledge that the margin available on nearly two-thirds of the customers in the state is nearly 40 percent or more. See WorldCom's Huffman Decl. Att. 1; AT&T's Lieberman Decl. Exh. B-1. Thus, even under the long distance incumbents' own analysis, the margins available to competitors in Vermont — for serving the majority of residential customers — are higher than the margins that AT&T and WorldCom claimed were available in Pennsylvania, which both WorldCom and this Commission found were sufficient to "allow for profitable entry."[38] And, while WorldCom claims that the amount it could earn in Vermont is not enough to cover its supposed $10 per month in internal costs, this amount is comparable to what WorldCom claims it can earn in New York, Texas, and Pennsylvania, where WorldCom has conceded the wholesale rates "permit competitive entry," create a local market that is

[38] Pennsylvania Order ¶ 71 ("WorldCom has not demonstrated that the rates set by the Pennsylvania Commission do not allow for profitable entry. WorldCom's own submission indicates that the state average rate provides a gross margin of roughly thirty percent for residential lines, and the margin is substantially higher for forty-six percent of residential lines."); Lopardo Tr. at 5606 (Verizon should be required to "[a]gree to the Pennsylvania rates, the state in the region that has most recently analyzed UNE rates, rates that we know lead to competitive entry, because they have statewide in Pennsylvania").

"open to competition," and enable them to "offer a quality product at a reasonable price."[39]

Moreover, AT&T's and WorldCom's gross-profit-margin analyses are flawed as a factual matter. Correcting for the long distance incumbents' mistakes and comparing Verizon's wholesale rates with the revenues from the true average retail customer in Vermont yields a gross profit margin available to competitors in Vermont that is considerably higher than the long distance incumbents claim. McCarren/Garzillo/Anglin Reply Decl. ¶¶ 42-45.

In any event, the Commission is under no legal obligation to perform a profit-margin analysis. Contrary to AT&T's characterization, the D.C. Circuit's decision in Sprint does not obligate the Commission to perform a profit-margin analysis. In Sprint, the court held only that, where the local market is "characterized by relatively low volumes of residential competition," the FCC must *either* "pursue the[] price squeeze claim, *or* at the very least explain why the public interest does not require it to do so." 274 F.3d at 553-54 (emphasis added). And the court strongly hinted that a full-scale price-squeeze analysis is unnecessary and likely impractical in a section 271 proceeding. For example, it stated that "the potential scale of a serious price squeeze inquiry" may be incompatible with the "90-day limit [that] constrains the scope of the Commission's inquiries." Id. at 555-56. The court also indicated that a price-squeeze analysis may be

[39] Final Brief of MCI WorldCom Communications, Inc. at 6, Consultative Report on Application of Verizon Pennsylvania, Inc., for FCC Authorization to Provide In-Region, InterLATA Service in Pennsylvania, Docket No. M-0000-1435 (Pa. PUC filed Apr. 18, 2001); see WorldCom, MCI Local Service: Frequently Asked Questions, at www.mciworld.com/home_family/products_services/local/faq.shtml#2; Ex Parte Letter from Bradley Stillman, MCI WorldCom, to Magalie Roman Salas, Secretary, FCC, Att. at 6-8, CC Docket No. 00-176 (FCC filed Nov. 1, 2000) (stating that state average gross margin is $8.96 in New York, $6.65 in Texas, and $6.87 in Pennsylvania).

futile, as "the residential market may not be attractive to competitors even if UNE costs are at the lower end of TELRIC." Id. at 556. Moreover, the court's decision did not purport to alter the long-standing rule that "the [FCC's] judgment regarding how the public interest is best served is entitled to substantial judicial deference." FCC v. WNCN Listeners Guild, 450 U.S. 582, 596 (1981).

In Vermont, there is ample legal justification for not conducting any analysis of whether the rates would provide an adequate profit margin. The price-squeeze claim advanced by AT&T relates exclusively to the price of the UNE platform, and the Commission may find that the availability of other entry mechanisms enables AT&T to avoid a price squeeze even if its claims about a price squeeze were true. For example, competitors also may serve customers through resale of Verizon's services, by obtaining stand-alone UNEs from Verizon, by interconnecting their own facilities with those of Verizon, or by some combination of these options. And the Act guarantees that competing carriers can *always* avoid a price squeeze by reselling Verizon's services, the rates for which must be set at a discount from Verizon's retail rates. See 47 U.S.C. § 251(c)(4); id. § 252(d)(3) ("a State commission shall determine wholesale rates [for resold services] on the basis of retail rates"). AT&T argues that the Commission should ignore these alternatives, but its claims are unavailing.

AT&T argues (at 37) that the Commission should ignore resale as an alternative to the UNE-P because the resale discount is "wholly insufficient to allow any firm to cover its internal costs of service." But the facts show that competitors in Vermont are serving approximately 16,000 lines through resale. See Application at 54. And while most of these lines are being provided to business customers, the resale discounts for residential and business customers were set by the Vermont PSB using the same pricing standards, and Verizon's processes and procedures for providing resale services to competitors in Vermont are the same for business and residential customers.

AT&T also argues (at 37) that resale is irrelevant because it "does not give a CLEC access to the 'inputs' required to provide long distance service." That is obviously untrue. CLECs that serve customers through resale are entitled to provide long distance service to those customers, either their own service or that of another provider. Thus, under a price-squeeze inquiry — whether under the antitrust law or section 271's public interest test — it is impossible to maintain that resale denies competitors an "input" that they could obtain through a UNE platform.

AT&T next claims (at 38) that it would be "wholly uneconomic" for a competitor to enter the residential local market by "leasing unbundled loops from Verizon and combining them with the CLEC's switches." But AT&T has made just the opposite claim in the New Jersey section 271 proceeding, where it has stated that a "critical component of AT&T's local plan . . . is the provision of residential and business local services using AT&T's own facilities collocated in Verizon's central offices, purchasing only the unbundled loop . . . from Verizon."[40] Moreover, while AT&T claims here that "carriers cannot rationally invest in switches until they have used UNE-P to build up a customer base," one carrier in Vermont — SoVerNet — has managed just that.[41]

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[40] AT&T NJ Comments at 11, CC Docket No. 01-347 (FCC filed Jan. 14, 2001); <u>see</u> AT&T's NJ Sczepanski Decl. ¶¶ 4-6, CC Docket No. 01-347 (FCC filed Jan. 14, 2001); AT&T's NJ Huels Decl. ¶¶ 5-7, CC Docket No. 01-347 (FCC filed Jan. 14, 2001).

[41] SoVerNet at 2 ("All of SoVerNet's voice services are provided over SoVerNet's own network of facilities. SoVerNet is a facilities-based CLEC owning a Siemens EWSD (class 4/5) switch."); <u>id.</u> at 3 ("As of January 30, 2002, SoVerNet had 78 local residential lines actively provisioned.").

IV. VERIZON SATISFIES ALL OTHER ASPECTS OF THE PUBLIC INTEREST TEST.

In its Application, Verizon demonstrated that there is significant local competition in Vermont; that Verizon's local markets will remain open after Verizon obtains section 271 approval; and that permitting Verizon to provide interLATA service in Vermont will vastly enhance consumer welfare by increasing both local and long distance competition. See Application at 74-98. The PSB has affirmed all of this, concluding that Verizon "has taken the appropriate steps to open the local exchange and exchange access markets in Vermont to competition in accordance with [the] standards set forth in the Act" and that "the Vermont local telephone markets are open to meaningful competition." Vermont PSB Approval Letter at 2, 7. The PSB also confirms that it has adopted "a comprehensive, effective, self-executing enforcement mechanism that will deter backsliding." PSB Report at 9. Based on all of this, the PSB finds that "significant public benefits will follow any FCC decision to grant Verizon's application." Id. at 8. A handful of CLECs quibble with some of these findings, but their arguments are unavailing.

A. Local Markets in Vermont Will Remain Open After Verizon Obtains Section 271 Approval.

Verizon's Application also shows that there is every assurance that local markets in Vermont will remain open after Verizon obtains section 271 approval. Virtually all parties recognize that the Vermont PSB has actively promoted local competition; that Verizon is subject to comprehensive performance reporting; and that Verizon's Performance Assurance Plan provides substantial incentives against backsliding. AT&T is the only commenter to disagree with any of this — taking issue with two aspects of the Performance Assurance Plan — but its arguments are wide of the mark.

Verizon demonstrated in its Application that it is subject to a self-executing Performance Assurance Plan in Vermont that mirrors the plans it has adopted, and the Commission has approved, in New York, Massachusetts, Connecticut, and Rhode Island. See Application at 93; PSB Report at 9; New York Order ¶ 429; Massachusetts Order ¶ 240; Connecticut Order ¶ 76; Rhode Island Order ¶ 108. Verizon's Vermont Plan places approximately $15 million in annual remedy payments at risk, an amount that is proportionately greater than what the Commission has found sufficient in the past. See Application at 93 & n.89; New York Order ¶ 435; Texas Order ¶ 424 & n.1235; Kansas/Oklahoma Order ¶ 274 & n.837; Arkansas/Missouri Order ¶ 129 & n.409. As the PSB found, the amount at risk "will deter backsliding" and "enhance . . . the pragmatic likelihood that the measures and metrics will adequately deter anti-competitive behavior." PSB Report at 9.

AT&T is the only commenter to object to the Plan that the Vermont PSB adopted. First, AT&T takes issue with the PSB's requirement that any remedy payments due under the Plan's Mode of Entry ("MOE") mechanism be paid into the Vermont Universal Service Fund rather than to CLECs. AT&T at 22-23; AT&T's Kalb Decl. ¶¶ 18-24. Yet the PSB found that, in Vermont, the Mode of Entry mechanism can "produce payments that very likely exceed the harm to some or all CLECs" and that a CLEC could "receive some payments even if it . . . had suffered no harm at all." PSB Report at 13-14, 18. For these reasons, the PSB concluded that, in Vermont, the Mode of Entry mechanism served a deterrent purpose, not a compensatory purpose, and that "[d]eterrent payments . . . should be paid into a fund of general benefit." Id. at 18. Therefore, the PSB required that Mode of Entry remedy payments be made to the state Universal Service Fund, which will provide the same deterrence value while ensuring "that MOE payments benefit all Vermont telecommunications users." Id. The PSB found that remedy payments due under the Critical Measures mechanism should continue to be paid to CLECs, because those payments "are directed to the CLECs who were actually harmed in a given month." Id. The Commission has previously recognized that state commissions may make reasonable, "state-specific modifications" to a plan "to address particular situations and conditions" in a given state. Arkansas/Missouri Order ¶ 129; Rhode Island Order ¶ 108.[42]

Second, AT&T contends that the use of a 95-percent confidence interval is "biased in Verizon's favor." AT&T at 23; AT&T's Kalb Decl. ¶¶ 25-30. The Vermont PSB rejected this claim, finding that "Verizon's overall statistical design [is] satisfactory." PSB Report at 14.[43] Moreover, this is the same confidence interval used for determining whether a BOC has satisfied a parity standard in all of the plans that the Commission has approved thus far. Finally, AT&T itself has previously supported this interval in filings before the Commission, explaining that a 95-percent confidence level "controls the frequency of false parity rejections at 5% while making the probability of

[42] In addition, AT&T's contention (at 22) that the Vermont Plan "fails to compensate CLECs for performance misses attributable to the vast majority of measures in the plan" not only fails to recognize that Mode of Entry remedy payments can be made to CLECs that suffered "no harm at all," but also that the Vermont PSB increased that amount at risk under the Critical Measures section of Verizon's proposed Plan by 48 percent. PSB Report at 14, 17.

[43] Contrary to AT&T's claims that a 95-percent confidence interval results in an "increased risk of Type II error," AT&T's Kalb Decl. ¶ 29, the Vermont PSB found that "the probability of Type II error is greatest where . . . Verizon's performance for its competitors is only slightly worse than its performance for itself," PSB Report at 13. Yet, when differences in performance are small, there is little potential for competitive harm to CLECs from any disparity. Put another way, when actual performance approaches parity in fact, the alleged harm to CLECs from Type II error is least likely to occur.

Type II errors small for violations that are of substantial size."[44] AT&T offers no explanation for its current claim that a different confidence level must be adopted to account for Type II errors.

B. Permitting Verizon To Provide InterLATA Service in Vermont Will Increase Long Distance and Local Competition.

Verizon demonstrated in its Application that its entry into the long distance market in Vermont will benefit consumers, just as consumers in New York, Massachusetts, and Pennsylvania have benefited from Verizon's entry in those states. See Application at 95-98. The Vermont PSB found that "allowing Verizon to offer interstate service to customers in Vermont will provide significant additional public benefit." Vermont PSB Approval Letter at 7. No CLEC challenges these facts, which are by now unassailable. See Massachusetts Order ¶ 234 ("BOC entry into the long distance market will benefit consumers and competition"); Pennsylvania Order ¶ 125 (same).

Nor does any commenter seriously dispute Verizon's showing that local competition has *increased* in Verizon's states following its long distance entry. Since Verizon's entry in New York, the number of local lines served by competitors there has increased by more than 130 percent, including a 345-percent increase in UNE-Platform lines and an 80-percent increase in facilities-based lines. See Application, Brief Att. A, Ex. 5. In Pennsylvania, CLECs have added more than 25,000 lines per month since the Pennsylvania PUC endorsed Verizon's section 271 application in June 2001. See id. Att.

[44] Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, AT&T Comments at 54, CC Docket No. 98-56 (FCC filed June 1, 1998).

A, Ex. 7. And, in Massachusetts, CLECs have been adding nearly 23,000 lines per month in that state. See id. Att. A, Ex. 6.[45]

[45] Although AT&T spends a substantial portion of its comments (at 41-43) criticizing SWBT's post-approval actions in Texas, it is telling that AT&T does not point to such examples by Verizon in New York — where Verizon has been providing long distance service for longer than any other BOC — Massachusetts, Pennsylvania, or Connecticut. The record is clear that Verizon's entry in those states has been highly beneficial to consumers. See, e.g., Application at 78-80. Moreover, the Commission has held that the experience with SBC's entry has been beneficial to consumers, just as Verizon's entry has been. See Kansas/Oklahoma Order ¶ 268; Arkansas/Missouri Order ¶ 125.

CONCLUSION

Verizon's Application to provide interLATA service originating in Vermont should be granted.

Respectfully submitted,

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